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8 **United States District Court**
9 **Central District of California**
10 **Western Division**
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12 UNITED STATES, *ex rel.* SERVE
13 ALL HELP ALL, INC., *etc.*, *et al.*,

14 Plaintiffs,

15 v.

16 HBSC BANK USA, *et al.*,

17 Defendants.

CV 14-00210 TJH (DFMx)

Order

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19 The Court has considered Relators' motion for leave to file a Fifth Amended
20 Complaint ["FAC"], together with the moving and opposing papers.

21 On April 14, 2017, the Court dismissed Relators' Fourth Amended Complaint
22 without prejudice because the Fourth Amended Complaint failed under the
23 *Twombly/Iqbal* standard, as well as the heightened Fed. R. Civ. P. 9(b) standard [the
24 "April 14, 2017, Order"]. The April 14, 2017, Order, also, dismissed Relators'
25 FIRREA claim with prejudice. Relators, now, request leave to file the FAC. The FAC
26 alleges only violations of the False Claims Act, 31 U.S.C. §§ 3729–3733, *et seq.*

27 Leave to amend a complaint, while generally granted liberally, is properly denied
28 when the amendments would be futile. *See Foman v. Davis*, 371 U.S. 178, 182 (1962).

1 Here, denial without leave is proper as the FAC would be futile because the claims are
2 barred by the False Claims Act's public disclosure bar. 31 U.S.C. § 3730(e)(4).

3 Further, district courts lack jurisdiction to consider *qui tam* suits, such as the
4 instant suit, under the "public disclosure bar . . . where there has been a public
5 disclosure of the [alleged] fraud, unless the relator qualifies as an 'original source' of
6 the information." *United States ex rel. Hartpence v. Kinetic Concepts, Inc.*, 792 F.3d
7 1121, 1127 (9th Cir. 2015) (en banc). "The public disclosure bar is triggered if three
8 things are true: (1) the disclosure at issue occurred through one of the channels
9 specified in the statute; (2) the disclosure was 'public'; and (3) the relator's action is
10 'based upon'" or is substantially similar to, *inter alia*, "the allegations . . . publicly
11 disclosed." *Malhotra v. Steinberg*, 770 F.3d 853, 858 (9th Cir. 2014).

12 On June 4, 2010, the complaint was filed in *United States ex rel. Szymoniak v.*
13 *Am. Home Mort. Servicing, Inc.*, Case No. 10-cv-1465, 2014 WL 1910845 (D.S.C.
14 May 12, 2014), *aff'd sub nom.*, 2017 WL 634705 (4th Cir. Feb. 16, 2017). The
15 *Szymoniak* complaint named "defendants who were the trustees or servicers of
16 mortgage-backed securities ("MBS") trusts in which the United States had invested."
17 The *Szymoniak* complaint alleged "false claims in three ways: (1)" that the defendants
18 "falsified documents to recover [Federal Housing Administration or "FHA"] . . .
19 mortgage insurance; (2)" that the defendants "charged the Government for the creation
20 and filing of the falsified documents in FHA-insured foreclosures; and (3)" that the
21 defendants "submitted false claims to the investors of MBS Trusts, including the
22 Government Plaintiffs, for services that were never rendered and for services and
23 expenses related to the falsified documents used in foreclosures." *United States ex rel.*
24 *Szymoniak*, 2014 WL 1910845 at *2. On August 1, 2013, the *Szymoniak* Court
25 unsealed the case.

26 Each element of the public disclosure bar is met. First, the *Szymoniak* complaint
27 constitutes "disclosure . . . through one of the channels specified in the statute[.]" *see*
28 *Malhotra*, 770 F.3d at 858, because § 3730(e)(4) specifies "Federal . . . civil . . .

1 hearing[s] in which the Government or its agent is a party.” Second, the disclosure was
2 public because, *inter alia*, the case was unsealed on August 1, 2013, and was,
3 therefore, disclosed to, at minimum, “a single individual” at that point. *See Malhotra*,
4 770 F.3d at 858.

5 Lastly, Relators’ action is based upon, or is substantially similar to “the
6 allegations . . . publicly disclosed” in *Szymoniak*. *See Malhotra*, 770 F.3d at 858.
7 Each Defendant in the instant matter was, also, a defendant in *Szymoniak*. Further,
8 similar to the allegations in *Szymoniak*, Relators allege, *inter alia*, that Defendants
9 falsified documents to recover FHA mortgage insurance. The FAC alleges, *inter alia*,
10 that each Defendant “presented to the United States false or fraudulent claims for
11 payment or approval, including but not limited to improper claims for payment of FHA
12 residential mortgage insurance or guarantees.” Further, the FAC does not show that
13 the public disclosure bar does not apply under the “original source” exception to the
14 public disclosure bar. *See United States ex rel. Hartpence*, 792 F.3d at 1127. Thus,
15 granting leave to file the FAC would be futile because its claims would be barred under
16 the False Claim Act’s public disclosure bar.

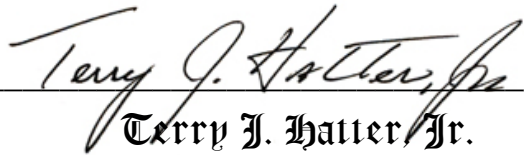
17 Moreover, even if the public disclosure bar did not apply, the FAC would be
18 barred under the first-to-file bar. *See* § 3730(b)(5). “The first-to-file bar precludes
19 civil actions based on complaints which allege the same material facts as an earlier-filed
20 civil complaint.” *United States ex rel. Hartpence*, 792 F.3d at 1123. Here, the
21 Complaint in the instant matter was filed on February 12, 2014, whereas the *Szymoniak*
22 complaint was filed on June 4, 2010. As discussed above, the FAC alleges the same
23 material facts as the *Szymoniak* complaint. Therefore, the first-to-file bar, also, bars
24 the FAC. *See United States ex rel. Hartpence*, 792 F.3d at 1123.

25 Accordingly,
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27 **It is Ordered** that the motion for leave to file a Fifth Amended Complaint be,
28 and hereby is, **Denied**.

1 It is Further Ordered that this case be, and hereby is, Dismissed with
2 prejudice.

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5 Date: July 25, 2017

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8 Terry J. Hatter, Jr.
9 Senior United States District Judge
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